

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 11, 2009

Ref. No.: GLS-5848

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

HAWAII

Consent to Sublease General Lease No. S-5848, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Trust dated October 23, 1991, Sublessor, to ARC of Hilo, Sublessee, Waiakea Houselots, Lots 15 & 16, Block 39, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 2-2-37: 63.

APPLICANT:

David S. De Luz Sr., Trustee of the David S. De Luz Sr. Trust dated October 23, 1991, Tenant in Severalty, as Sublessor, to ARC of Hilo, a Hawaii non-profit corporation, as Sublessee.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea Houselots, Lots 15 & 16, Block 39, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 2-2-37: 63, as shown on the attached map labeled **Exhibit A**.

AREA:

.8953 acres (39,000 s.f.), more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES \_\_\_\_ NO x

LEASE CHARACTER OF USE:

General industrial purposes.

SUBLEASE CHARACTER OF USE:

Training and occupational programs for ARC of Hilo clients for employment in fields relating to car washing, cleaning, laundering, recycling, and retail sales purposes.

TERM OF LEASE:

20 years, commencing on January 1, 2006 and expiring on December 31, 2026. First rental reopening is scheduled for January 1, 2016.

TERM OF SUBLEASE:

1 year, commencing on November 1, 2009 and expiring on October 31, 2010 with options for 1-year extensions thereafter.

Sublease Extensions (optional):

Year 1: November 1, 2010 to October 31, 2011  
\$5,500 per month, plus general excise tax, maintenance, utilities, insurance and real property taxes.

Year 2: November 1, 2011 to October 31, 2012  
\$5,500 per month, plus general excise tax, maintenance, utilities, insurance and real property taxes.

ANNUAL RENTAL:

\$ 72,000.00.

ANNUAL SUBLEASE RENTAL:

\$60,000.00 Payable in advance in monthly installments of \$5,000, plus general excise tax, property tax, utilities, maintenance, and insurance.

\$5,000.00 security deposit

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None. Refer to **Exhibit B** attached for review by staff appraiser on sandwich calculations.

DCCA VERIFICATION:

SUBLESSOR:

Not applicable. As a trust, Sublessor is not required to register with the Department of Commerce and Consumer Affairs.

SUBLESSEE:

Place of business registration confirmed: YES

Registered business name confirmed: YES

Good standing confirmed: YES

REMARKS:

Subject property was originally encumbered under General Lease No. S-3888 to the Hawaiian Telephone Company by way of a public auction in 1965. At its meeting of August 22, 2003, Item D-6, the Land Board approved the mutual cancellation of the lease.

On March 1, 2004, the Land Board approved the issuance of Revocable Permit No. S-7375 to Terminix International Company for General Industrial purposes.

At its meeting of November 19, 2004, Item D-16, the Land Board approved the issuance of a twenty year lease for general commercial purposes under General Lease No. S-5848. David S. De Luz Sr., Trustee of the David S. De Luz Sr. Trust was the successful bidder.

By letter dated October 13, 2009, Sublessor requested approval from the Board of Land and Natural Resources for consent to sublease of General Lease No. S-5848 to the ARC of Hilo. The sublease is to provide the ARC of Hilo a temporary site for conducting its training and occupational programs for its clients, while its property off Waianuenue Avenue is being renovated. The various activities on the property would include training and occupational programs for its clients for employment in fields relating to car washing, cleaning, laundering, recycling, and retail sales.

The Appraisal Section reviewed and has determined that no lease rental adjustments are required and that there is no sandwich profits.

Staff reviewed the file and can report that for the past two years all terms and conditions of the lease is in compliance. Liability and fire insurance is current, with scheduled expiration on 12/31/09. A surety bond issued by First Insurance Company in the amount of \$144,000 for 8/6/2009-8/6/2010 is on file. Sublessor has never been cited for any illegal or unlawful activity on the State property. There is no outstanding rental

reopening issues.


No agency or community comments were solicited, as there will be no new disposition or change in land use.

RECOMMENDATION:

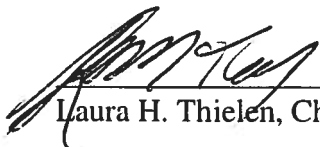
That the Board consent to the sublease under General Lease No. S-5848 between David S. De Luz Sr., as Trustee of the David S. De Luz Sr. Trust dated October 23, 1991, as Sublessor, and the ARC of Hilo, as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
2. Sublessor shall ensure that sublessee's use of the premises is consistent at all times with county zoning, which is designated as general industrial;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Wesley T. Matsumaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson



LINDA LINGLE  
GOVERNOR OF HAWAII



LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
CONSERVATION WATER RESOURCES MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

November 10, 2009

MEMORANDUM

TO: Laura H. Thielen, Chairperson

THROUGH: Morris M. Atta, Division Administrator *Morris M. Atta*

FROM: Cyrus C. Chen, Real Estate Appraisal Manager *Cyrus Chen*

SUBJECT: In-House Valuation Recommendation – Sandwich Profit Determination for Sublease Between David S. De Luz, Sr. and Big Island Toyota Inc. (Lessee/Sublessor) and The Arc of Hilo (Sublessee)

GL No.: S-5848  
Lessee/Sublessor: David S. De Luz, Sr. and Big Island Toyota Inc.  
Sublessee: The Arc of Hilo  
Location: Waiakea Houseslots, Waiakea, S. Hilo, HI  
Land Area: 39,000 sq. ft.  
Tax Map Key: (3) 2-2-37: 63  
Char. of Use: General Industrial

We have been requested to provide an in-house evaluation of the sublease between David S. De Luz, Sr. and Big Island Toyota Inc. (Lessee/Sublessor) and The Arc of Hilo (Sublessee) to see if sublease sandwich profits can be collected. The current ground lease rent is \$72,000 per annum. The sublease rents are \$5,000 per month, or \$60,000 per annum, plus general excise tax and other expenses.

Based on a review of the lease and sublease agreement, I have applied the sublease rent participation policy, approved by the Board on May 26, 2000, Item D-24, and amended January 26, 2001, Item D-8, as follows.


Annual Sublease Income + GET	\$62,499.60
Less: General Excise Tax	<u>(\$2,499.60)</u>
Net Annual Sublease Income	<u>\$60,000</u>
Less Annual Ground Rent	<u>(\$72,000)</u>
Additional Annual Rent	(\$12,000)
Multiplied by 50%	<u>x .50</u>

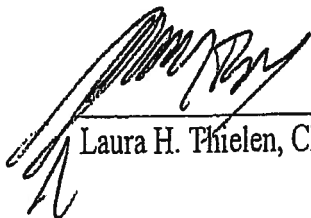
NOV 12 2009

**EXHIBIT B**

Additional Annual Rent due DLNR (\$6,000)

The calculation of sublease premiums amounts to a negative figure. Therefore, as of the date of this evaluation, Staff recommends no participation in this sublease.

 Approved/Disapproved:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson

12/12/09  
Date

cc: District Branch Files NOV 13 2009  
Central Files

**EXHIBIT B**